

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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KENNETH SERBENTA,

Plaintiff,

v

BCI COCA-COCA BOTTLING COMPANY
OF LOS ANGELES, *et al.*,

Defendants.

Case No. 2:06-cv-1427-RLH-LRL

ORDER

(Motion to Dismiss-#17)
(Countermotion to Amend-#18)
(Motion to Amend-#20)

Before the Court is Defendant BCI Coca-Cola Bottling Company of Los Angeles' Motion to Dismiss Plaintiff's First and Second Causes of Action (#17). Plaintiff filed a Response to the Motion to Dismiss and Countermotion to Amend Complaint (#18), *sans* a proposed amended complaint. Defendant filed a Reply (#19), noting that it had reviewed Plaintiff's draft of an amended complaint, that there were still issues to be resolved with the proposed amended complaint, and that if they were resolved, Defendant would withdraw its motion. Finally, Plaintiff filed his Motion to Amend Complaint (#20), which contains a proposed amended complaint, and to which there has been no opposition filed.

Although Defendant has not requested that its motion to dismiss be withdrawn, Local Rule 7-2(d) provides that failure to file points and authorities in opposition to a motion constitutes a consent that the motion be granted. *Abbott v. United Venture Capitol, Inc.* 718 F.Supp. 828, 831 (D. Nev. 1989). It has been said these local rules, no less than the federal rules or acts of Congress, have the force of law. *United States v. Hvass*, 355 U.S. 570, 574-575 (1958); *Weil v. Neary*, 278 U.S. 160, 169 (1929); *Marshall v. Gates*, 44 F.3d 722, 723 (9th Cir. 1995). Furthermore, it appears that the basis for the motion to dismiss has been removed from

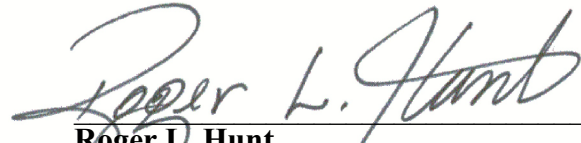
1 the proposed amended complaint.

2 IT IS THEREFORE ORDERED that Defendant BCI Coca-Cola Bottling
3 Company of Los Angeles' Motion to Dismiss Plaintiff's First and Second Causes of Action (#17)
4 is DENIED.

5 IT IS FURTHER ORDERED that Plaintiff's Countermotion to Amend Complaint
6 (#18) is DENIED.

7 IT IS FURTHER ORDERED that Plaintiff's Motion to Amend Complaint (#20)
8 is GRANTED Plaintiff shall file and serve his First Amended Complaint forthwith and
9 Defendant shall file its answer or otherwise respond within 20 days of service.

10 Dated: April 12, 2007.

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13 **Roger L. Hunt**
14 **Chief United States District Judge**
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